

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-010521

11/07/2012

HONORABLE MICHAEL J. HERROD

CLERK OF THE COURT  
M. Brady  
Deputy

CORNERSTONE BANK

SHARON W NG

v.

KOZUB HOLDINGS L L C, et al.

WILLIAM A KOZUB

**UNDER ADVISEMENT RULING**

The Court held an evidentiary hearing on preliminary injunction on October 12, 2012.

Plaintiff claims that Defendants should be enjoined from foreclosing various deeds of trust pursuant to A.R.S §33-811(C) in order for Plaintiff to be able to pursue its fraudulent transfer claims on the previous transfers.

The Kozub Defendants claim that they received their interest in the deeds of trust for reasonably equivalent value, and that Plaintiff's injunctive relief should be denied. However, Plaintiff claims that the fraudulent transfers occurred prior to the transfer to the Kozub Defendants by transfers from the Pollock-Pfizenmaier entities to other entities prior to the transfer to the Kozub Defendants. Plaintiff alleges that the transfers to other entities were without consideration.

In 2007, Plaintiff made three loans totaling \$5,900,000.00. The first loan was to an entity known as 225th & Dixileta Properties, LLC. The loan was personally guaranteed by Stephen Michael Pollock and the Pollock-Pfizenmaier Trust. The entity was controlled by the guarantors. The second and third loans were made to the Trust and guaranteed by Pollock. The second loan is alleged to have been made to Pollock as the obligor also.

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On December 30, 2008, Berens, Kozub and Kloberdanz received a multiple advance promissory note for \$550,000.00 evidencing prior and future attorneys fees owed. On January 2, 2009, Darla Pfizenmaier passed away. At the time of her death, the Pollock-Pfizenmaier Family Trust required that the trust be divided for estate tax purposes into a Family Trust and a Decedent's Trust. The Court refers to the LLC, Pollock and the Trust as the "Pollock-Pfizenmaier entities".

In the spring of 2009, the First Loan went into default, followed by the others.

On October 28, 2009, Plaintiff, Cornerstone Bank, and the Pollock-Pfizenmaier entities entered into a Settlement Agreement to resolve the various real estate loans made by Plaintiff to the Pollock-Pfizenmaier entities. Ultimately, the Pollock-Pfizenmaier entities defaulted in the terms of the Settlement Agreement and Plaintiff, Cornerstone Bank, filed a lawsuit against the Pollock-Pfizenmaier entities on September 30, 2010 in North Dakota for breach of the Settlement Agreement. Cornerstone received a judgment in North Dakota on January 31, 2012 for violation of the Settlement Agreement.

As of January 31, 2012, the balance owed by the Pollock-Pfizenmaier entities was \$3,015,384.01.

Berens, Kozub and Kloberdanz (BKK) acted as attorneys for the Pollock-Pfizenmaier entities throughout the applicable time periods and knew about the Cornerstone settlement, allegations of breach and Judgment.

During the two weeks following execution of the Settlement Agreement between November 4 and November 13, 2009, the Pfizenmaier Entities conveyed some real estate interests from the Pfizenmaier Family Trust into the Pfizenmaier Decedent's Trust. Immediately following those transfers, the same interests were conveyed to other entities. Plaintiff alleges that the transfers were fraudulent transfers.

Subsequently, certain deeds of trust were conveyed to BKK to secure the note owed to them. Subsequent to that, BKK conveyed those interests to Kozub Holdings, LLC. Also, two deeds of trust were conveyed to BKK directly from the Pollock-Pfizenmaier Family Trust to BKK on November 6, 2009.

Two of the deeds of trust, namely the 12th and Calvary deed of trust and the 33rd and Maddock deed of trust, were transferred to BKK prior to the alleged breach of the Settlement Agreement, but while the underlying loans were in breach prior to the Settlement Agreement.

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Based on the evidence presented, the Court finds that if injunctive relief is not granted, irreparable harm will occur in that Defendants will be able to foreclose their deeds of trust before Plaintiff can pursue their fraudulent transfer claims, and that the harm that will be incurred by the Plaintiff outweighs the harm that will be incurred by Defendants.

**IT IS ORDERED** preliminarily enjoining Defendants from foreclosing their deeds of trust.

The Court has also considered the Motion to Dismiss filed by William Kozub, and the Response thereto.

**IT IS ORDERED** denying the Motion to Dismiss, but clarifying that the injunction against Mr. Kozub is in his capacity as managing member and/or manager of Kozub Holdings, LLC for the sole purpose of preventing foreclosure of the deeds of trust.

**IT IS FURTHER ORDERED** that Plaintiff shall submit a form of Order, as the Court chooses not to execute the permanent injunction submitted.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.